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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

FILED  
AT ALBUQUERQUE NM

AUG 10 1999

EUTIMIO SALGADO,

Applicant,

ROBERT M. MARCH  
CLERK

v.

No. CIV-99-0862 JC/RLP

JOE WILLIAMS, Warden,

Respondent.

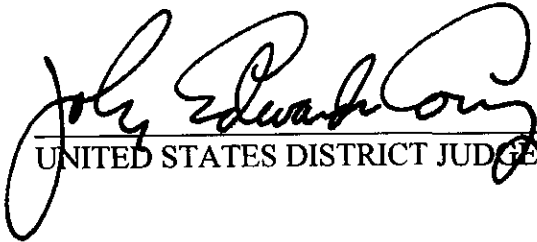
MEMORANDUM OPINION AND ORDER

This matter is before the Court sua sponte to review Applicant's motion filed August 2, 1999, seeking an extension of time to file an application for writ of habeas corpus under 28 U.S.C. § 2254. As grounds, Applicant alleges his counsel refused to advise him of the date his state court appeal was final. He states that a ruling by the New Mexico Supreme Court was filed January 26, 1999, and asks that the Court extend the one-year limitation period in § 2244(d)(1).

Although the limitation period in § 2244(d)(1) is subject to tolling, *Miller v. Marr*, 141 F.3d 976, 978 (10th Cir. 1998) (limitation period in § 2244(d) subject to equitable tolling), *cert. denied*, 119 S.Ct. 210 (1998); *Hoggro v. Boone*, 150 F.3d 1223, 1226 (10th Cir.), *reh'g and reh'g en banc denied* (1998), the Court has no authority to extend a statutory limitation period in advance. *United States ex rel. Tennessee Valley Auth. v. Easement and Right-of-Way over Certain Land in Cumberland County, Tenn.*, 386 F.2d 769, 771 (6th Cir. 1967), *cert. denied sub nom. Skaggs v. United States*, 390 U.S. 947 (1968); *Hammons v. Int'l Playtex, Inc.*, 676 F. Supp. 1114, 1118 (D. Wyo. 1988), *vacated on other grounds*, 872 F.2d 963 (10th Cir. 1989); *Parker v. Marcotte*, 975 F. Supp. 1266, 1269 (C.D. Cal. 1997); *but see Calderon v. United States Dist. Ct.*, 128 F.3d 1283 (9th

Cir. 1997) (affirming anticipatory tolling of limitation period in § 2244) (cited with approval in *Miller*, 141 F.3d at 978). No opinion is expressed or implied herein with respect to expiration of the time during which Applicant may file an application under 28 U.S.C. § 2254. The relief sought is not available, and the motion will be denied.

IT IS THEREFORE ORDERED that Applicant's motion filed August 2, 1999, for extension of time to file an application for writ of habeas corpus under 28 U.S.C. § 2254 is DENIED; the Clerk is directed to send Applicant a form § 2254 application with instructions; within thirty (30) days from entry of this order, Applicant may file a § 2254 application in this proceeding; and this proceeding will be dismissed if a § 2254 application is not filed within thirty (30) days.

  
UNITED STATES DISTRICT JUDGE